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**SK USA Cleaners, Inc. a/k/a SK USA Shirts, Inc. and Yi Jae Cho and Local 947, International Union of Journeymen and Allied Trades.** Cases 22–CA–026959 and 22–CA–087198

January 25, 2017

**SUPPLEMENTAL DECISION AND ORDER**

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS  
PEARCE AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondents have failed to file an answer to the consolidated amended compliance specification.

On March 22, 2006, the Board issued a Decision and Order in Case 22–CA–026959<sup>1</sup> finding that Respondent SK USA Cleaners, Inc. (Respondent SK USA Cleaners) violated Section 8(a)(3) and (1) of the Act, and ordering it to, among other things, make whole all employees who were discharged on June 15, 2005. On June 28, 2006, the Court of Appeals for the Third Circuit entered its Judgment enforcing the Board’s Order in full.<sup>2</sup>

A controversy having arisen over the amount due under the Board’s Order in Case 22–CA–026959, as enforced, on October 30, 2006, the Regional Director for Region 22 issued a compliance specification and notice of hearing, alleging the amount due under the Board’s 2006 Order. On January 30, 2009, Respondent SK USA Cleaners and its president, Yi Jae Cho, signed a stipulated compliance agreement, requiring Respondent SK USA Cleaners to pay \$105,105.39 to make the discharged employees whole; Cho agreed that in case of noncompliance, he would be jointly and severally liable for the total unpaid balance of the amounts owed, less any payments already made, plus interest.<sup>3</sup>

On March 8, 2013, the Board issued a Decision and Order in Case 22–CA–087198<sup>4</sup> finding that Respondent SK USA Shirts, Inc. (Respondent SK USA Shirts) violated Section 8(a)(5) and (1) of the Act, and ordering it, among other things, to remit to Local 947, International Union of Journeymen and Allied Trades (the Union) all dues since February 2012 that have not been remitted as

required by the parties’ 2007–2013 collective-bargaining agreement. On December 5, 2013, the Court of Appeals for the Third Circuit entered its judgment enforcing the Board’s Order in full.<sup>5</sup>

A controversy having arisen over the amount due under the Board’s Order in Case 22–CA–087198, as enforced, on February 27, 2015, the Regional Director issued a compliance specification and notice of hearing, alleging the amount due under the Board’s 2013 Order, and alleging that Cho is jointly and severally liable with Respondent SK USA Shirts to fulfill the remedial obligations of the Board’s Order.

On April 1, 2015, the Regional Director issued a supplemental compliance specification in Case 22–CA–026959 against Respondent SK USA Cleaners and Respondent Yi Jae Cho, alleging that pursuant to the stipulated compliance agreement and by Respondent Cho’s misconduct in his failure to adhere to corporate formalities, Respondent Cho is jointly and severally liable with Respondent SK USA Cleaners for the remedial obligations of the Board’s 2006 Order, and further alleging the amount due under the Board’s 2006 Order, the administrative law judge’s 2007 decision, and the 2009 stipulated compliance agreement.<sup>6</sup>

On April 1, 2015, the Regional Director also issued an amended compliance specification in Case 22–CA–087198 against Respondent SK USA Shirts and Respondent Yi Jae Cho, alleging that pursuant to Respondent Cho’s misconduct in his failure to adhere to corporate formalities, Respondent Cho is jointly and severally liable with Respondent SK USA Shirts for the remedial obligations of the Board’s 2013 Order.

On January 11, 2016, the Regional Director issued an Order amending and consolidating cases, consolidated amended compliance specification and notice of hearing (the consolidated amended compliance specification).<sup>7</sup> The consolidated amended compliance specification alleges that Respondent Cho is jointly and severally liable with Respondent SK USA Cleaners and Respondent SK USA Shirts for fulfilling the obligations of the Board’s Orders in Cases 22–CA–026959 and 22–CA–087198, and its caption lists the Respondents in both cases as SK USA Cleaners, Inc. a/k/a SK USA Shirts, Inc. and Yi Jae

<sup>5</sup> No. 13–2359.

<sup>6</sup> An amended compliance specification and notice of hearing had been issued on February 27, 2015, which was superseded by the April 1, 2015 document.

<sup>7</sup> The Regional Director had also issued a consolidated amended compliance specification on August 20, 2015. With the exception of the dates specified for the filing of an answer and the scheduled hearing, the consolidated amended compliance specifications appear to be identical. Therefore, this decision refers only to the more recent consolidated amended compliance specification dated January 11, 2016.

<sup>1</sup> 346 NLRB No. 63.

<sup>2</sup> No. 06–2585.

<sup>3</sup> Respondent SK USA Cleaners paid \$53,449.32 under the stipulated compliance agreement, but still owes \$25,820.68 in backpay, \$16,280.35 in interest, and surcharge fees of \$9,555.04, for a total of \$51,656.07.

<sup>4</sup> 359 NLRB No. 74.

Cho (collectively the Respondents). In addition, it sets forth the amounts owed under the stipulated compliance agreement and the Board's Order in Case 22-CA-026959, as well as the amount owed under the Board's Order in Case 22-CA-087198, notifying the Respondents that they must file a timely answer complying with the Board's Rules and Regulations. About January 26, 2016, the Respondents provided the Region with an answer to the consolidated amended compliance specification.<sup>8</sup>

By letter dated February 10, 2016, the Regional Director informed the Respondents that their answer did not satisfy the specificity requirements set forth in Section 102.56(b) of the Board's Rules and Regulations and stated that failure to file an appropriate amended answer by February 17, 2016, would prompt a motion for default judgment. In particular, the Regional Director advised that the Respondents' answer provided only general denials and "failed to respond with specificity to the allegations in the Specification," and that "it is not clear from your Answer whether you denied the bases for the amounts alleged in the Specification and whether you provided alternative calculations." At the Respondents'

<sup>8</sup> The purported answer consists of a document signed by Yi Jae Cho, which refers to SK USA Cleaners, Inc., lists an incorrect case number, and is titled: "Counter-Claim to the Complaint," as well as several partially legible attachments, including a handwritten document in Korean and pages that appear to be handwritten work schedules or timesheets. The document signed by Cho describes his "limited capacity" due to a medical condition and states that he "would like to suspend all the related legal process until he recovers." In a second section titled "Background of Labor Union Action," the document states, in part:

I believe that there is nothing under-complied against the terms and conditions with Local 947. All those employees in the matter have left the SK USA at that time. Those who demanded "NO TAX, NO CHECK" from June 16, 2005 were solicited by Local 947 to initiate the strike. However, 2 of them have returned to work 2 years later, who are still employees of the SK USA.

I believe that SK USA has been a victim suffered from the ongoing tremendous damage by the Local 947 Union for nothing but only its own rights and profits.

I dare to say Local 947 Union being a fraud organization who wants to collect membership fee from each worker as well as from each small business entity, and demand a fair/impartial investigation and/or a trial to reveal the truth of the entire process behind the Labor Union with the grounds as follows:

The document then lists several "Grounds," enumerating various stated transgressions by the Union, and requesting that a Korean interpreter, a cardiologist, and US and Korean media reporters be present at the hearing. In addition, "Ground E" appears to assert financial difficulty, stating "[t]he unstable status of the SK USA finance due to the back deposit order of \$25,000.00 by the Labor Board, which SK USA could not afford, which resulted in collection seizure as of January 2009 through then SK USA vendors. Therefore, all those existing vendors suspended the business transaction with SK USA since then."

request, the Region had the February 10, 2016 letter translated into Korean. Although properly served with the translation of the Regional Director's letter, the Respondents failed to file an amended answer.

On October 28, 2016, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On November 2, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allegations in the motion are therefore undisputed.

#### Ruling on the Motion for Default Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states, in relevant part:

(b) *Contents of answer to specification.* The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification . . .*

. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The undisputed allegations of the General Counsel's Motion for Default Judgment establish that the Regional Director, by letter dated February 10, 2016, notified the Respondents that their answer did not satisfy the speci-

ficiency requirements set forth in Section 102.56(b) of the Board's Rules and Regulations and unless an appropriate amended answer was filed by February 17, 2016, a motion for default judgment would be filed. Further, according to the undisputed allegations in the motion for default judgment, as described above, the Regional Director translated the February 10, 2016 letter into Korean at the Respondents' request and properly served a copy of the translation on the Respondents but, to date, the Respondents have not filed an amended answer.

We note that the Respondents' answer was filed pro se.<sup>9</sup> In determining whether to grant a motion for default judgment on the basis of a respondent's failure to file a sufficient or timely answer, the Board typically shows some leniency toward respondents who proceed without benefit of counsel. See, e.g., *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003). Indeed, the Board generally will not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer that can reasonably be construed as denying the substance of the complaint. *Id.*

Here, however, the Respondents' answer cannot reasonably be construed as denying the substance of the factual allegations in the consolidated amended compliance specification. None of the answer's statements corresponded with any of the numbered paragraphs in the consolidated amended compliance specification, nor did the answer include any specific admissions or denials of any of the allegations in the consolidated amended compliance specification. The substance of the Respondents' answer fails to address any of the factual or legal allegations concerning the Respondents' backpay liability, and the answer asserts facts that are not responsive to the allegations in the consolidated amended compliance specification. In addition, the Respondents do not set forth the basis of their disagreement with the amounts of backpay or union dues set forth in the consolidated amended compliance specification, and they have failed to offer any alternative formula or figures for computing these amounts. See, e.g., *M. D. Miller Trucking & Topsoil*, 363 NLRB No. 49, slip op. at 3 (2015), and cases cited therein. See also *United States Service Industries*, 325 NLRB 485, 486 (1998) (general denial is not sufficient to refute allegations pertaining to backpay). Ac-

cordingly, we find that the Respondents did not answer the allegations in the consolidated amended compliance specification with sufficient specificity under Section 102.56(b) and (c) of the Board's Rules and Regulations.

In the absence of good cause for the Respondents' failure to file a legally sufficient answer, we deem the allegations in the consolidated amended compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the consolidated amended compliance specification, and we will order the Respondents to pay those amounts, plus interest accrued to the date of payment. We also conclude that the dues to be remitted to the Union are as stated in the consolidated amended compliance specification, and we will order the Respondents to pay those amounts, plus interest accrued to the date of payment.

#### ORDER

The National Labor Relations Board orders that the Respondents, SK USA Cleaners, Inc. a/k/a SK USA Shirts, Inc., Garfield, New Jersey, their officers, agents, successors, and assigns, and the Respondent Yi Jae Cho, his agents, successors, and assigns, shall make whole the discriminatees by paying them the remaining principal, interest, and surcharge still owed to each under the stipulated compliance agreement, as specified in the consolidated amended compliance specification, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws. We shall also order the Respondents to remit to the Union dues that have not been remitted since February 2012, as specified in the consolidated amended compliance specification, plus interest accrued to the date of payment, as prescribed in *New Horizons*, supra, compounded daily as set forth in *Kentucky River Medical Center*, supra.

<sup>9</sup> The Board, unlike the federal courts, permits respondent corporations to appear without counsel. See *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201–202 (1993) (“It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel.”); *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985) (“The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear pro se, and must be represented by counsel.”), cert. denied 474 U.S. 1058 (1986).

TOTAL AMOUNT OF BACKPAY DUE TO  
DISCRIMINATEES: \$51,656.07<sup>10</sup>

TOTAL AMOUNT OF DUES TO BE REMITTED  
TO UNION: \$28,224.00<sup>11</sup>

Dated, Washington, D.C. January 25, 2017

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Philip A. Miscimarra,            Acting Chairman

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Mark Gaston Pearce            Member

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Lauren McFerran,            Member

(SEAL)            NATIONAL LABOR RELATIONS BOARD

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<sup>10</sup> This total represents the remaining \$25,820.68 due the discriminatees for monetary losses under the Board's 2006 Order, as enforced; \$16,280.35 in interest; and the \$9,555.04 surcharge (pars. 7–9 of consolidated amended compliance specification).

<sup>11</sup> We have corrected the calculation in par. 23 of the consolidated amended compliance specification, which listed an amount of \$24,864 but specified that the total represents \$672 (the representative amount of dues for 1 month) "multiplied by the number of months, to date, that Respondent has failed to remit dues, which is 42 months (Feb. 2012 through Aug. 2015)." Based on this formula (\$672 x 42), \$28,224 is the amount of dues payments owed. The \$24,864 figure is apparently an inadvertent carryover from the original compliance specification in Case 22–CA–087198, which covered a 37-month period (\$672 x 37 = \$24,864).